

The Honorable Robert S Lasnik

**James McDonald
14840 119th PL NE
Kirkland, WA 98034**

**UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

James McDonald		Plaintiff	No. C10-1952-RSL
	v.		Plaintiffs Reply to Defendants Response to Motion to Disburse Funds and Motion to Strike
OneWest Bank, FSB, Northwest Trustee Services, Mortgage Electronic Registration Systems,		Defendants.	Noting Date: June 1, 2012

Comes now Plaintiff James McDonald and respectfully submits this Reply to the Defendants' Response to Plaintiff's Motion to Disburse Funds.

Arguments

1. Plaintiff moves to strike the Defendants Response based on their violation of Local Rules 7(d)(3). "Any opposition papers shall be filed and served not later than the Monday before the noting date." As the Monday in question was Memorial Day, per the local rules, the Response would be due no later than the next business day, Tuesday, May 29, 2012. Instead, the Defense filed their Response on Wednesday, May 30, 2012. The only motions that allow for a Wednesday response are: motions from relief from deadlines, motions for protective orders and motions to seal per Local Rule 7(d)(2). The motion presently before the Court is none of those.

This is not the first time the Defense has ignored deadlines in this case. The Defense previously filed a brief after the deadline in their Reply to Plaintiff's Opposition to the

1 Defendants' Motion for extension of dispositive motion cutoff date (Dkt. 118) which Plaintiff
2 brought to the Court's attention in a Surreply (Dkt. 119). In both cases, the Defense failed to
3 request an extension of time to respond or offer any explanation or apology for their late filing.
4 This late filing reduces the amount of time Plaintiff has had to reply, which causes prejudice to
5 a pro se litigant as they need the full time allowed to properly respond, and shows disrespect to
6 the Court's rules.

7 2. The Defense seeks to utilize *Meeker v. Stuart*, D.C.D.C. 1960, 188 F.Supp.272 as their
8 basis for their argument, which requested monetary damages for the implementation of a
9 preliminary injunction. However the Defendants' own Motion for Summary Judgment (Dkt.
10 121) shows that *Meeker v Stuart* is not applicable in this case. In the Defendants' MSJ there is
11 no request for relief in the form of monetary damages. The only relief requested is a finding in
12 the favor of the Defendants and a setting of a sale date. Therefore there appears to be no reason
13 for the Court to retain Plaintiff's funds. In Plaintiff's position for this Motion, he is not seeking
14 an award of damages, but the release of his own funds.

15 *Meeker v. Stuart* would only apply if a party was seeking damages from the Court
16 registry prior to final judgment. No party is seeking damages from the funds within the Court
17 Registry. As there is no Preliminary Injunction in place and no request for relief in the form of
18 monetary damages by the Defense, there appears to be no reason for the Defense to object to
19 this motion.

20 **Conclusion**

21 Wherefore Plaintiff respectfully moves the Court to strike the Defendants' Response to his
22 motion and grant Plaintiff's Motion to Release the funds in the Court Registry.

23 **/s/ James McDonald -**
24 **James McDonald**
Pro Se

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3 **Certificate of Service**

4 I hereby certify that on the 1st day of June, 2012 the foregoing was electronically filed with the Clerk of
the Court using the ECF system, which sent notification and therefore served the following:

5 Heidi Buck
Routh Crabtree Olsen
13555 SE 36th ST Suite 300
Bellevue, WA 98006

6 **/s/ James McDonald -**
James McDonald
7 Pro Se

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